

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0193**

**Use Tax**

**Calendar Years 1996, 1997, 1998, and 1999**

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**ISSUE(S)**

**I. Gross Retail Tax – Remittance**

**Authority:** IC 6-2.5-2-1

Taxpayer protests the audit assessment

**II. Tax Administration – Penalty**

**Authority:** IC 6-8-10-1-2.1, 45 IAC 15-11-2

The Department addresses the penalty.

**STATEMENT OF FACTS**

Taxpayer failed to show for a hearing scheduled for Tuesday, February 6, 2001. The determination is made based upon information contained in the audit file and taxpayer's protest letter dated March 16, 2000. The Department has allowed the taxpayer ample time to provide information.

Taxpayer operates an asphalt-manufacturing plant in Indiana. The taxpayer maintained a seasonal filing status with the Department for the periods April through October and is a non-filer for the periods 5/96, 7/96, 8/96, 9/96, 10/96, and 4/97 through 10/97. The taxpayer paid system-generated billings (SBIA's) in lieu of the actual sales tax liability incurred for these periods. The taxpayer was allowed credit for all payments made during the audit period. In addition, taxpayer failed to file returns and remit sales/use tax as required for tax year ended 12/31/98 and the pre-petition bankruptcy period.

Taxpayer collected sales tax on asphalt sold at retail but failed to file ST-103's and remit the tax collected to the department with the exception of June 1996. The taxpayer did not provide the auditor with complete sets of sales journals and invoice registers; consequently additional taxable sales represents the total gross receipts as reported on the federal income tax returns (Form 1120) less

Department issued (BIA) billings paid by the taxpayer.

**I. Gross Retail Tax – Remittance**

**DISCUSSION**

Taxpayer's letter dated March 16, 2000 states it does not owe tax for Government/Municipal sales, non-collectable sales and year-end write-offs, and previously paid tax assessments. Taxpayer provided several ST-105's and AD-70's that were not taken into consideration at audit.

Audit is instructed to adjust for the correct exemption certificates presented with the taxpayer's protest letter. Additional adjustments can not be made for the write-offs or previously paid tax assessments as no proof nor detail has been provided.

**FINDING**

Taxpayer's protest is partially denied and partially sustained.

**II. Tax Administration – Penalty**

**DISCUSSION**

Although the taxpayer did not specifically protest the penalty assessed, the department addresses the penalty. Taxpayer failed to file ST-103's returns, collect and remit sales tax.

Taxpayer has not provided reasonable cause for the failure to collect and remit sales tax.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is partially denied and partially sustained for issue I and denied for issue II.